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NO. 82-5

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,
*Appellant*

v.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,
*Appellees*

**On Appeal From The Court Of Appeals For The Ninth Supreme Judicial District Of Texas**

## MOTION TO DISMISS OR AFFIRM

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## QUESTIONS PRESENTED

1. Whether a justiciable issue arises under the due process clause of the Fourteenth Amendment based solely on a party's allegations that its property was annexed by a municipality for purposes of taxation, and that its property will not receive a direct benefit from city services.

2. Whether the due process clause of the Fourteenth Amendment requires a direct benefit to be provided to property which is subjected to ad valorem taxation by a municipality for general support of the municipal government.

## LIST OF ALL PARTIES

APPELLANT:

The Superior Oil Company

APPELLEES:

The City of Port Arthur, Texas

Bernis W. Sadler, Mayor and member of the City Council of the City of Port Arthur, Texas.

George W. Dibrell, City Manager of the City of Port Arthur, Texas.

Maurice Conerly, Arthur J. Guidry, Joe James, Malcolm L. Clark, C. Fred Huber, and Ray Bernard, members of the City Council of Port Arthur, Texas.

The Board of Equalization of the City of Port Arthur, Texas for the year 1980.

Sam Aquilina, George W. Lacey, Leroy Arceneaux, E. W. Meyer, and Alfred Valdez, members of the Board of Equalization of the City of Port Arthur, Texas for the year 1980.

Roland Bieber, Tax Assessor and Collector of the City of Port Arthur, Texas.

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THE CITY OF PORT ARTHUR, TEXAS, ET AL,
*Appellees*

**On Appeal From The Court Of Appeals For The Ninth Supreme Judicial District Of Texas**

## MOTION TO DISMISS OR AFFIRM

The City of Port Arthur, Texas, et al, move the Court pursuant to Sup. Ct. R. 16.1, to dismiss the appeal herein, or, in the alternative, to affirm the judgment rendered in this case by the Texas Court of Appeals for the Ninth Supreme Judicial District.

The principles of law controlling the questions presented are so well established, and appellant's contentions are so lacking in substance, that plenary review of the case by this Court is not warranted.

## OPINIONS BELOW

The opinion of the Texas Court of Appeals for the Ninth Supreme Judicial District is reported at 628 S.W. 2d 94. Neither the State District Court nor the Supreme Court of Texas issued an opinion in this case.

## STATEMENT OF THE CASE

This is a municipal annexation and ad valorem tax case. In November, 1979, the City of Port Arthur, Texas, enacted Ordinance 79-116. By this ordinance, the city annexed certain submerged lands owned by the State of Texas, upon which appellant has five oil, gas and mineral leases, and various production facilities.

The City of Port Arthur enacted the annexation ordinance in full compliance with the Texas Municipal Annexation Act, Tex. Rev. Civ. Stat. art. 970a (Vernon's 1963, Supp. 1981) as it then existed,[1] and appellant has never contested the procedure under state law.[2]

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1. The Texas Municipal Annexation Act was substantially modified by amendment in 1981. However, these amendments do not affect the annexation in question.

2. In late 1979, the State of Texas brought a quo warranto proceeding on the relation of the Commissioner of the General Land Office, challenging the annexation of the submerged lands owned by the State of Texas. *State of Texas, ex rel, Bob Armstrong, Commissioner of the General Land Office of the State of Texas v. City of Port Arthur, Texas*, cause no. A-110,231, in the 58th Judicial Court of Jefferson County, Texas. A second quo warranto proceeding was brought by the State of Texas on the relation of the Superior Oil Company. *The State of Texas, ex rel, The Superior Oil Company v. The City of Port Arthur, Texas*, cause no. A-110,319, in the 58th Judicial Court of Jefferson County, Texas. These two suits were consolidated on January 23, 1980. On February 26, 1980, a judgment was entered in the consolidated case upholding the validity of Ordinance No. 79-116. The State of Texas failed to perfect an appeal, and the judgment is final.

After annexation, appellant's property became subject to ad valorem taxation by the City of Port Arthur. The property was assessed for taxation by the city in 1980 and appellant subsequently brought this suit in State District Court challenging the annexation and taxation of its property.

Initially, appellant challenged the taxation of its property by alleging that other taxable property was deliberately excluded from the city's tax rolls. However, that claim was dropped in an amended petition. Further, appellant has never contended that the city's ad valorem taxes are used for anything other than public purposes, and, in the proceedings below, appellant judicially admitted that it was not challenging the City's assessed valuation of its property. Thus, at trial, appellant's sole contention was that the annexation and taxation of its property violated the due process and equal protection[3] clauses of the Fourteenth Amendment to the United States Constitution.

The trial court granted summary judgment for the City of Port Arthur, which was affirmed by the Texas Court of Appeals for Ninth Supreme Judicial District. The Texas Supreme Court refused appellant's application for writ of error with the notation of "no reversible error".

Appellant now seeks review from this Court based solely on the allegations that appellant's property was annexed by Port Arthur for the purpose of taxation, and that appellant's property will not receive any direct benefit from municipal services.

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3. Appellant has not appealed to this Court the rejection by the lower courts of its equal protection claim.

## ARGUMENT

The questions presented by this appeal are so unsubstantial and lacking in merit that they do not warrant plenary review by the Court. In an unbroken line of cases, this Court has consistently held (1) that municipal annexations do not present a justiciable matter under the due process clause of the Fourteenth Amendment; and (2) that nothing in the due process clause of the Fourteenth Amendment requires a taxpayer to derive any direct benefit from taxes levied for public purposes.

### A.

### No Justiciable Issue

The Court should dismiss this appeal because there is no substantial federal question presented by appellant's claim. In *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907) this Court held that the territory to be included within municipalities and other political subdivisions is a matter of "absolute discretion" by the states,[4] which does not present a justiciable matter under the due process clause of the Fourteenth Amendment. 28 Sup. Ct. at 46-47.

Numerous courts have applied *Hunter* to municipal annexations, and this Court has consistently declined to

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4. Significantly, the Texas legislature has exercised its discretion in the area of municipal annexations of state owned submerged lands. In 1981, subsequent to Port Arthur's annexation in this case, the Texas legislature enacted § 11.0131 of the Texas Natural Resource Code. This statute prohibits home-rule cities from annexing state owned submerged lands located gulfward from the coastline. However, the act specifically provided that it did not apply to annexations completed before the effective date of the act. Thus, the statute did not affect Port Arthur's annexation in this case. The statute is reproduced at Appendix A.

disturb or review these cases. *See Jimenez v. Hidalgo County Water Improvement District No. 2*, 68 F.R.D. 668, 671-72 (S.D. Tex. 1975), *aff'd*, 424 U.S. 950 (1976); *Hammonds v. City of Corpus Christi*, 226 F. Supp. 456, 458 (S.D. Tex. 1964), *aff'd*, 343 F.2d 162 (5th Cir.), *cert. denied*, 382 U.S. 837 (1965); *Deane Hill Country Club, Inc. v. City of Knoxville*, 379 F.2d 321, 324-25 (6th Cir. 1967), *cert. denied*, 389 U.S. 975 (1967); *Detroit Edison Co. v. East China Township School District No. 3*, 378 F.2d 225, 228-29 (6th Cir.), *cert. denied*, 389 U.S. 932 (1967); *Carter v. Hamlin Hospital District*, 538 S.W.2d 671, 673-74 (Tex. Civ. App.—Eastland 1976, writ ref'd n.r.e.), *cert. denied*, 430 U.S. 984 (1977). Thus, no substantial federal question is presented by this appeal because Port Arthur's annexation does not present a justiciable issue under the Fourteenth Amendment.

Appellant has erroneously argued that *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) limits the *Hunter* decision under the facts of the present case. *Gomillion* involved racial discrimination in the area of voting rights, which is not at issue here; and *Gomillion* was decided under the *Fifteenth* Amendment, not the Fourteenth Amendment. 364 U.S. at 342-43.

Rather than limiting *Hunter v. Pittsburgh*, this Court has made it clear that, in areas other than voting rights, "the case continues to have substantial constitutional significance in emphasizing the extraordinarily wide latitude that States have in creating various type of political subdivisions and conferring authority upon them". *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978). This is particularly true in the present case,

inasmuch as the territory annexed is state owned land. It is plain that Port Arthur's annexation in this case does not present a justiciable matter under the due process clause of the Fourteenth Amendment, and the Court should dismiss this appeal, or, alternatively, affirm the judgments of the Courts below.

## B.

## Benefit From Taxes

Appellant's contention that the ad valorem tax imposed by Port Arthur on appellant's property violates the due process clause of the Fourteenth Amendment, is patently without merit and borders on being frivolous. Appellant relies on *Myles Salt Co. v. Board of Commissioners*, 239 U.S. 478 (1916), alleging that its property will receive no direct benefit from city services. However, *Myles Salt Co.* involved a limited purpose drainage district established solely for the benefit of specific tracts of land. In contrast, the present case involves a municipality with general police jurisdiction, and ad valorem taxes levied for public purposes, and for the general welfare of the entire community.[5]

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5. At various points in its Jurisdictional Statement, appellant incorrectly states that its property was annexed and taxed "solely for the benefit of other property". (Jurisdictional statement at 5 and 8).

Further, there was summary judgment evidence that the Superior Oil Company is benefited by municipal services, including liquid waste disposal, access to shoreside shipping points by public streets, city water sold and delivered by offshore service industries for exploration and drilling, and police services. Further, the city had concerns about the environmental impact of offshore drilling operations, and regulation of pipelines that cross the annexed territory. (Deposition of Mayor Bernis Sadler).

Although appellant claims the facts of this case are unique, the law is clear and long established. Very recently, in *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981), this Court reaffirmed the "consistent rule" that:

> " 'Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.
>
> A tax is not an assessment of benefits. It is, as we have said, a means of distributing the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . .' "

453 U.S. at ____, 69 L.Ed.2d at 897, *quoting, Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-22 (1937).

Further, this "consistent rule" has been adhered to by this Court for more than 100 years. *See, Kelly v. City of Pittsburgh*, 104 U.S. (14 Otto) 78, 79-83 (1881); *Thomas v. Gay*, 169 U.S. 264, 18 Sup. Ct. 340, 344-46 (1898); *St. Louis & S.W. Ry. v. Nattin*, 277 U.S. 157, 159 (1928); *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-23 (1937).

In short, appellant's contention that the ad valorem taxes in this case violate the due process clause, based solely on appellant's allegation that its property will receive no direct benefit from city services, is wholly without merit and does not present a substantial question warranting plenary review by this Court.

## CONCLUSION

For the reasons stated above, appellees move the Court to dismiss this appeal for lack of a substantial federal question, or, in the alternative, to affirm the judgment entered in this cause by the Texas Court of Appeals for the Ninth Supreme Judicial District.

Respectfully submitted,

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July 30, 1982

# APPENDIX

# APPENDIX A

## H. B. No. 411

*Be it enacted by the Legislature of the State of Texas:*

Section 1. Chapter 11, Natural Resources Code, as amended, is amended by adding Section 11.0131 to read as follows:

Sec. 11.0131. Jurisdiction of Home-Rule Cities Over Submerged Lands

(a) In this section:

(1) "Coastline" has the meaning assigned by Section 11.013(c) of this code.

(2) "State-owned submerged lands" means the state-owned submerged lands described by Section 11.012 of this code.

(b) A home-rule city may not annex state-owned submerged lands located:

(1) gulfward from the coastline; or

(2) more than 5,280 feet from the corporate city boundaries in bays or estuaries.

(c) A contract or agreement by which a home-rule city purports to pledge, directly or indirectly, taxes or other revenue from or attributable to state-owned submerged lands located more than one marine league gulfward from the coastline does not create an enforceable right to prevent the removal, by disannexation or other means, of all or part of the submerged lands from the city's jurisdiction.

(d) This section expires October 1, 1983.